

§ 4.234

(ii) As evidence of the execution, admit proof of the handwriting of the testator and of the attesting witnesses, or of any of them.

(2) The provisions of § 4.232 are applicable with respect to remaining issues.

§ 4.234 Witnesses, interpreters, and fees.

(a) Interested parties who desire a witness to testify or an interpreter to serve at a formal hearing must make their own financial and other arrangements therefor, and subpoenas will be issued where necessary and proper.

(b) The administrative law judge or Indian probate judge may call witness and interpreters and order payment out of the estate assets of per diem, mileage, and subsistence at a rate not to exceed that allowed to witnesses called in the U.S. District Courts.

(c) In hardship situations, the administrative law judge or Indian probate judge may order payment of per diem and mileage for indispensable witnesses and interpreters called for the parties. In the order for payment, the administrative law judge or Indian probate judge must specify whether such costs are to be allocated and charged against the interest of the party calling the witness or against the estate generally.

(d) Costs of administration allowed against the estate under paragraphs (b) or (c) of this section will have a priority for payment greater than that for any creditor claims allowed. Upon receiving an order, the Superintendent must immediately initiate payment of these sums from the estate account, or if funds are insufficient, then out of funds as they are received in the estate account before closure of the estate, with the proviso that these costs must be paid in full with a later allocation against the interest of a party, if the administrative law judge or Indian probate judge has so ordered.

§ 4.235 Supplemental hearings.

After the matter has been submitted but before the time the deciding official has rendered his or her decision, the deciding official may upon his or her own motion or upon motion of any interested party schedule a supplemental hearing if he or she deems it

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necessary. The notice must set forth the purpose of the supplemental hearing and must be served upon all interested parties in the manner provided in § 4.216. Where the need for such supplemental hearing becomes apparent during any hearing, the deciding official may announce the time and place for such supplemental hearing to all those present and no further notice need be given. In that event, the records must clearly show who was present at the time of the announcement.

§ 4.236 Record.

(a) After the completion of the formal hearing, the administrative law judge or Indian probate judge will make up the official record containing:

(1) A copy of the posted public notice of hearing showing the posting certifications;

(2) A copy of each notice served on interested parties with proof of mailing;

(3) The record of the evidence received at the hearing, including any transcript made of the testimony;

(4) Claims filed against the estate;

(5) Will and codicils, if any;

(6) Inventories and valuations of the estate;

(7) Pleadings and briefs filed;

(8) Special or interim orders;

(9) Data for heirship findings and family history;

(10) The decision and the notices thereof; and

(11) Any other material or documents deemed material by the administrative law judge or Indian probate judge.

(b) The administrative law judge or Indian probate judge must lodge the original record with the designated LTRO in accordance with 25 CFR part 150. A duplicate copy must be lodged with the Superintendent originating the probate. A partial record must also be furnished to the Superintendents of other affected agencies. When a hearing transcript has not been prepared:

(1) The verbatim recording of the hearing must be retained in the office of the administrative law judge or Indian probate judge issuing the decision until the time allowed for rehearing or appeal has expired; and

(2) The original record returned to the LTRO must contain a statement

indicating that no transcript was prepared.

DECISIONS IN FORMAL PROCEEDINGS

SOURCE: 70 FR 11820, Mar. 9, 2005, unless otherwise noted.

§4.240 Decision of the administrative law judge or Indian probate judge and notice thereof.

(a) The administrative law judge or Indian probate judge must decide the issues of fact and law involved in any formal proceedings and must incorporate the following in his or her decision:

(1) In all cases, the names, identifying numbers as assigned by BIA, birth dates, relationships to the decedent, and shares of heirs, with citations to the law of descent and distribution in accordance with which the decision is made, or the fact that the decedent died leaving no legal heirs;

(2) In testate cases, approval or disapproval of the will with construction of its provisions, and the names, identifying numbers as assigned by BIA, and relationships to the testator of all beneficiaries and a description of the property which each is to receive;

(3) Allowance or disallowance of claims against the estate;

(4) Whether heirs or beneficiaries are non-Indian, exclusively alien Indians, or Indians whose property is not subject to Federal supervision; and

(5) A determination of any rights of dower, curtesy, or homestead that may constitute a burden upon the interest of the heirs.

(b) When the administrative law judge or Indian probate judge issues a decision, he or she must:

(1) Issue a notice of the decision to all parties who have or claim any interest in the estate; and

(2) Must mail a copy of the notice, together with a copy of the decision, to the Superintendent and to each interested party simultaneously.

(c) The decision will not become final and no distribution may be made thereunder until the expiration of the 60 days allowed for the filing of a petition for rehearing by aggrieved parties as provided in §4.241.

§4.241 Rehearing.

(a) Any person aggrieved by the decision of the administrative law judge or Indian probate judge may, within 60 days after the date on which notice of the decision is mailed to the interested parties, file with the administrative law judge or Indian probate judge a written petition for rehearing.

(1) The petition must:

(i) Be under oath; and

(ii) State specifically and concisely the grounds on which it is based.

(2) If the petition is based on newly-discovered evidence, it must:

(i) Be accompanied by affidavits or declarations of witnesses stating fully what the new testimony is to be; and

(ii) State justifiable reasons for the failure to discover and present that evidence, tendered as new, at the formal hearings held before the issuance of the decision.

(b) The administrative law judge or Indian probate judge, upon receiving a petition for rehearing, must promptly forward a copy to the Superintendent. The Superintendent must not initiate payment of claims or distribute the estate while such petition is pending, unless otherwise directed by the administrative law judge or Indian probate judge.

(c) If proper grounds are not shown, or if the petition is not filed within the time prescribed in paragraph (a) of this section, the administrative law judge or Indian probate judge will:

(1) Issue an order denying the petition and setting forth his or her reasons therefor; and

(2) Furnish copies of the order to the petitioner, the Superintendent, and the interested parties.

(d) If the petition appears to show merit, the administrative law judge or Indian probate judge must:

(1) Cause copies of the petition and supporting papers to be served on those persons whose interest in the estate might be adversely affected by the granting of the petition;

(2) Allow all persons served a reasonable, specified time in which to submit answers or legal briefs in opposition to the petition; and

(3) Reconsider, with or without a hearing as he or she may determine, the issues raised in the petition; he or